

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT CINCINNATI**

ALEX PENLAND,

Petitioner,

: Case No. 1:18-cv-648

- vs -

District Judge Michael R. Barrett
Magistrate Judge Michael R. Merz

SEAN BOWERMAN, Warden,
Toledo Correctional Institution,

:

Respondent.

**DECISION AND ORDER STRIKING DESIGNATION OF MOTION
FOR AUTHORIZATION [OF] EXPENSE FOR EXPERT AS FILED
EX PARTE AND UNDER SEAL AND DENYING MOTION; ORDER
TO THE CLERK**

This habeas corpus case is before the Court on Petitioner's Application for Authorization [of] Expense for Expert (ECF No. 62).

Petitioner filed the document with the designation that it is "ex parte" and also that it is filed under seal. Except in very limited circumstances, judges are ethically prohibited from considering *ex parte* requests from parties to litigation. The instant Application does not qualify for that treatment and its designation as filed ex parte is stricken. Furthermore and perhaps more fundamentally, no document may be filed in this Court under seal without prior permission of a judge. S. D. Ohio Civ. R. 5.2.1; *Shane Group, Inc., v. Blue Cross Blue Shield of Michigan*, 825 F.3d 299, 306 (6th Cir. 2016)(Kethledge, J.). Accordingly, the Clerk is ORDERED to remove the designation "ex parte" and "Sealed" from the Application and notify respondent's counsel of the

availability of these documents.

As authority for granting the Application, Penland relies on 18 U./S.C. § 3006A. That statute authorizes counsel appointed under a Criminal Justice Act plan to apply for funding for necessary expert services. The statute does not authorize applications for expert funds by *pro se* litigants nor is the Magistrate Judge aware that Congress has ever appropriated funds for such services for *pro se* litigants.

In addition to the lack of authorization to procure the services, Penland has not shown that the result of any such expert review would be admissible in evidence, given the limitations on post-conviction evidence in *Cullen v. Pinholster*, 563 U.S. 170 (2011).

The Application is DENIED.

January 21, 2020.

s/ *Michael R. Merz*
United States Magistrate Judge